

Local Union No. 9, International Brotherhood of Electrical Workers, AFL-CIO and Omni Electric, Inc. and State of Indiana District Council, Laborers' International Union of North America, Party in Interest; Laborers Local No. 5, Laborers' International Union of North America, AFL-CIO, Party in Interest; International Union of Operating Engineers Local Union No. 150, AFL-CIO; Party in Interest; Indiana Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Party in Interest; Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Party in Interest; and Roger and Sons Mill Maintenance, Inc., Party in Interest. Case 13-CD-462

August 31, 1992

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed April 29, 1992,¹ by the Employer, Omni Electric, Inc., alleging that the Respondent, Local Union No. 9, International Brotherhood of Electrical Workers, AFL-CIO (Electrical Workers) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees of Omni Electric, Inc., represented by Laborers Local No. 5, Laborers' International Union of North America, AFL-CIO (Laborers Local 5). The hearing was held June 2, 1992, before Hearing Officer Bruce Standish. Thereafter, the Employer and the Electrical Workers filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Omni Electric, Inc., a Georgia corporation whose principal place of business is in Michigan City, Indiana, is an electrical contractor primarily engaged in installing public works lighting systems in the States of Indiana, Illinois, Ohio, and Kentucky. The Employer during the past calendar year, a representative period, from its Michigan City, Indiana facility purchased and received goods valued in excess of \$50,000 from points directly outside the State of Illinois. The Employer, the Electrical Workers, and Laborers Local 5

stipulate,² and we find,³ that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Electrical Workers; Laborers Local 5; the State of Indiana District Council, Laborers' International Union of North America; the International Union of Operating Engineers Local Union No. 150, AFL-CIO; the Indiana Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.⁴

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer has been in business for 13 years, has been based in Indiana since 1981, and is currently working in Indiana, Illinois, Ohio, and Kentucky. The Employer's work is primarily public work involving installation of simple lighting systems including street lighting systems, traffic signals, air traffic control systems, duct work, conduit installation, and cabling.

The Employer became a union contractor in 1988 and is signatory to contracts with the Laborers, the Teamsters, and the Operating Engineers in Indiana, Illinois, and Ohio. The Employer does not have a contract with the Electrical Workers.

In peak season, the Employer has 30 to 40 construction employees, 90 percent of whom are represented by the Laborers. Five or six employees represented by the Laborers, and one represented by the Teamsters, have been with the Employer for more than 3 years. The Employer employs two electricians who are not represented by any union. In addition, the Employer hires employees represented by the Operating Engineers as needed for its projects.

²The other Parties in Interest did not appear at the hearing and did not enter into the stipulation.

³The parties' commerce stipulation is not well stated, referring as it does to the Employer's purchasing and receiving in the State of *Indiana* goods from points located outside the State of *Illinois*. However, we note that the parties also stipulated that the "Employer is engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the National Labor Relations Board." On the basis of the parties' stipulations and the record as a whole, we find that a sufficient basis exists for asserting jurisdiction over the Employer in the instant 10(k) proceeding.

⁴The designation "Laborers" will include, as appropriate, Local Unions and District Councils of the Laborers' International Union of North America, AFL-CIO, in Illinois, Ohio, and Indiana. "Teamsters" will include, as appropriate, Local Unions and District Councils and/or Conferences of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO in Illinois, Ohio, and Indiana. "Operating Engineers" will include the International Union of Operating Engineers Local Union No. 150, AFL-CIO and, as appropriate, any other local of that Union in Illinois, Ohio, and Indiana with which the Employer has a collective-bargaining agreement.

¹All subsequent dates are in 1992 unless otherwise specified.

Through a competitive bid, the Employer obtained a contract from the Illinois Department of Transportation to replace an obsolete lighting system involving about 78 street lights with a new up-to-date system. The Employer commenced this work in Lansing, Illinois, on April 22, with a work crew consisting of seven employees represented by the Laborers and one employee represented by the Teamsters. Five of the employees represented by the Laborers had been with the Employer for 3 years or longer, and two were from Laborers Local 5, an Illinois local.

On April 27, the Electrical Workers began picketing the jobsite with area standards picket signs and continued picketing until May 5. On April 27, seven pickets carried signs that read, "Omni Electric, Incorporated, Unfair. Does not pay area standard wages and benefits." On that same day the pickets stopped a concrete truck from delivering and pouring concrete.

On April 28, Robert Hairopoulos, the Employer's executive vice president, visited the jobsite and told Robert Pearson, business agent for the Electrical Workers, that the Employer would pay its employees the wages paid to members of the Electrical Workers if that was what the Electrical Workers wanted. Pearson replied, "No, that isn't all we want, that is our work out there. That is all our work." Hairopoulos told Pearson that the Employer was a union contractor; its people were affiliated with other unions, i.e., the Laborers, the Teamsters, and the Operating Engineers. Pearson replied that it was all Electrical Workers' work.

Later that day Hairopoulos talked to Pearson, and Pearson told him that the pickets would be there until a contract was signed. At Pearson's request, Hairopoulos called the Electrical Workers' business manager, Burkhart, who explained that the work the Employer was doing in Lansing was Electrical Workers' work.

B. Work in Dispute

The work in dispute involves the removal of the existing highway lighting system and the installation, both temporary and permanent, of a new, modern highway lighting system on Torrence Avenue and Ridge Road in Lansing, Illinois, including the installation of underground electric lines and conduit, concrete work, and all related work.

C. Contentions of the Parties

The Employer contends that there is reasonable cause to believe that the Electrical Workers violated Section 8(b)(4)(D) of the Act. The Employer further contends that the work in dispute is not electrical work and should be awarded to Omni employees based on the Employer's preference and past practice, the collective-bargaining agreements which the Employer has

with the Laborers, Operating Engineers, and Teamsters, the economy and efficiency of awarding the work to Omni employees, and Board precedent.

Laborers Local 5 contends that the Employer employs employees it represents, has a collective-bargaining agreement with the Laborers Union, and that the Employer should continue to employ Laborers-represented employees, to whom it has presently assigned the work.

The Electrical Workers contends that the work in dispute calls for one integrated electrical circuit and electrical system that ties in with other electrical systems and is necessarily electrical work by the definition contained in the Illinois Department of Transportation contract. The Electrical Workers contends that the work in dispute should be assigned to employees it represents based on skill and training, industry and area practice, and the determination by the Illinois Department of Labor that Omni was guilty of violating the Prevailing Wage Act.⁵

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there is reasonable cause to believe that a union has threatened to use or has used proscribed means to force an employer to assign work to one group of employees rather than to another.

At the beginning of this dispute, the Employer's own employees, most of whom were represented by the Laborers, had been assigned to perform certain work in Lansing, Illinois. Employees represented by the Electrical Workers picketed the job with area standards picket signs and also prevented a load of concrete from being delivered and poured.

As discussed above, when Robert Hairopoulos, the Employer's executive vice president, offered to pay area standards wages, Robert Pearson, the Electrical Workers' business agent, stated that wages were not all they wanted and claimed the work. Pearson later told Hairopoulos that the pickets would be there until a contract was signed. In a phone conversation, Electrical Workers' business manager, Burkhart, also claimed the work.

Although the message on the picket signs was couched in area standards language, the evidence at the hearing indicated that *an* object of the picketing was to obtain the assignment of work. The presence of the

⁵ The Electrical Workers produced evidence concerning an investigation of Omni Electric, Inc. in 1988 for alleged violation of the Illinois Prevailing Wage Act relative to a contract for street light maintenance. We find the evidence irrelevant to the issue in this proceeding of the identity of the employees entitled to perform the work.

latter object is “sufficient to bring a union’s conduct within the meaning of Section 8(b)(4)(D).” *Plasterers Local 594 (Tectonics Engineering)*, 286 NLRB 259, 260 (1987) (footnote omitted).

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and the record contains no evidence of an agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

There is no evidence that any of the Unions has been certified by the Board to represent the employees of the Employer. The Employer has had contracts in various jurisdictions with the Laborers, Teamsters, and Operating Engineers since 1988, but it does not have a contract with the Electrical Workers. The Employer is signatory to contracts with the Laborers, Teamsters, and Operating Engineers in Illinois by virtue of its membership in the Illinois Road Builders’ Association. The contracts are in evidence and arguably cover the disputed work. However, because the Employer did not complete its application with the Illinois Road Builders’ Association until April 28, the day after the picketing began, and because other factors exist that, in any event, favor an award of the disputed work to Omni employees, we find it unnecessary to consider the contracts in determining the merits of the jurisdictional dispute.

2. Company preference and past practice

The Employer has used its own unrepresented employees and, since 1988, has also used employees represented by the Laborers, Teamsters, and Operating Engineers to perform work similar to the work in dispute.⁶ The Employer prefers to continue to use its own

employees. We find that this factor favors awarding the work to the Employer’s own employees.

3. Area and industry practice

The Electrical Workers produced evidence that the area practice is to use employees represented by the Electrical Workers to do the type of work in dispute. However, when as here a job has been awarded to an employer from another State or area and that employer uses its own employees in performing such work, the area practice prevalent where the jobsite is located cannot be considered determinative. See *Sheet Metal Workers Local 41 (B & W Metals)*, 231 NLRB 122, 124 (1977); *Painters Local 48 (Manganaro Corp.)*, 267 NLRB 1208, 1212 (1983). Although the Electrical Workers contends that the industry practice is to use employees represented by the Electrical Workers, the evidence of this was limited to testimony of International IBEW Representative Jerry O’Connor. O’Connor testified that the International IBEW takes the position that on electrical construction projects the entire work involved can be done by electricians. We find that this factor does not favor awarding the work to either group of employees.

4. Relative skills

The Electrical Workers presented evidence that the American Line Builders Association (ALBAT) and the IBEW have combined to create an apprentice program for outside electricians. The course includes training in digging holes, trenches, pouring concrete, and setting poles. Electrical Workers Local 9 subscribes to this program and, in addition, offers a training program for all new Local 9 members and offers journeyman improvement programs throughout the year. The Employer presented evidence that the disputed work is very simple and does not require a high degree of skill. Hairopoulos testified that less than 1 percent of the work involved is electrical work and that, except for actually wiring connections, which the Employer performs with its own electricians, the work is simple nontechnical work, not electrical work and does not require electrical skill or knowledge. Gregory Neulieb, Omni’s superintendent, testified that the Laborers’ work is “very adequate” and done “very professionally.” We find that this factor does not favor awarding the work in dispute to either group of employees.

5. Economy and efficiency of operations

The Employer finds it more economical and efficient to assign the disputed work to its own experienced employees, who are familiar with the Employer’s equipment, operating processes, and quality requirements. In addition, the Employer currently uses a working supervisor. Under a contract with the Elec-

⁶On one occasion in 1990, the Employer deviated from this practice and used IBEW-represented employees on a job in Ohio, but the Employer found their work to be inadequate.

trical Workers, the Employer would be required, on a crew of more than five persons, to hire an additional employee, a nonworking foreman. We find that this factor favors awarding the work in dispute to the Employer's own employees.

Conclusions

After considering all the relevant factors, we conclude that the Employer's own employees including those who are represented by Laborers Local No. 5, Laborers International Union of North America, AFL-CIO; the State of Indiana District Council, Laborers' International Union of North America; the International Union of Operating Engineers Local Union No. 150, AFL-CIO; the Indiana Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and past practice and economy and efficiency of operations.

In making this determination, we are awarding the work to the Employer's own employees including those represented by the Laborers, the Teamsters, and the Operating Engineers, not to those Unions or their members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Omni Electric, Inc., including those represented by Laborers Local No. 5, Laborers' International Union of North America, AFL-CIO; the State of Indiana District Council, Laborers' International Union of North America; the International Union of Operating Engineers Local Union No. 150, AFL-CIO; the Indiana Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO are entitled to perform the removal of the existing highway lighting system and the installation, both temporary and permanent, of a new, modern highway lighting system on Torrence Avenue and Ridge Road in Lansing, Illinois, including the installation of underground electric lines and conduit, concrete work and all related work.

2. Local Union No. 9, International Brotherhood of Electrical Workers, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Omni Electric, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local Union No. 9, International Brotherhood of Electrical Workers, AFL-CIO shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with the determination.